



DEPARTMENT OF THE NAVY
NAVAL TRAINING CENTER
GREAT LAKES, ILLINOIS 60088-5021

NTCGLAKESINST 12551.1
N21

28 AUG 1990

NTC GREAT LAKES INSTRUCTION 12551.1

From: Commander, Naval Training Center, Great Lakes

Subj: FAIR LABOR STANDARDS ACT

Ref: (a) FPM 551
(b) FPM/CPI 550, FPM Supplement 990-2
(c) FPM Supplement 532-1 and CPI thereto

Encl: (1) Home to Work Travel as "Hours of Work" Under FLSA
(2) Travel Within the Limits of the Official Duty Station as "Hours of Work" Under FLSA
(3) Work Performed While Traveling Away from Official Duty Station as "Hours of Work" Under FLSA
(4) Travel as a Passenger on a One-day Assignment Away from Official Duty Station as "Hours of Work" Under FLSA

1. Purpose. This instruction sets forth policies, procedures, and regulations governing the administration of the Fair Labor Standards Act (FLSA) in accordance with reference (a).

2. Cancellation. NTCGLAKESINST 12000.2, Chapter III, Subchapter 3.

3. Background. Amendment to the FLSA brought Federal employees under the coverage of the act in 1974. This legislation does not repeal or amend existing Federal pay laws (specifically those under Title 5 of the United States Code (USC)). Therefore, no Federal employee will have his/her pay or pay-related benefits reduced to conform to the FLSA standard. The FLSA exempts certain employees from the overtime provisions of the Act. Such exemption includes employees in executive, administrative, and professional positions and all employees serving in certain foreign areas. Thus, the act does not affect pay entitlements with respect to exempt employees. However, nonexempt employees, for overtime purposes, are covered by two laws. Whenever application of the overtime provisions of the FLSA and Title 5 USC produce different results, nonexempt employees will receive overtime pay on the basis of whichever law results in the greater benefit to the employee.

4. Policy

a. Overtime "suffered or permitted". FLSA introduces a new concept regarding overtime work into the Federal service. Under

28AUG 1990

this concept, a nonexempt employee becomes entitled to overtime compensation (for hours worked in excess of 40 a week) for all work which management "suffers or permits" to be performed. In other words, for nonexempt employees, overtime need not be "officially ordered or approved" as is presently required under Title 5 USC. Thus, a nonexempt employee who commences work prior to the scheduled shift, or continues to work during meal periods or at the end of the shift, even though the work was not requested, may become entitled to compensation for overtime work. The Act provides that an employee can seek relief directly from the courts for overtime work performed for which he/she feels that he/she has not been properly compensated. Therefore, if management does not intend for overtime work to be performed, it must insure that nonexempt employees work only during their scheduled tour of duty. For example, a stenographer who arrives at his/her desk and begins typing letters or answering phones before normal working hours is entitled to overtime compensation. The copy machine operator who continues to run the machine while eating lunch is entitled to compensation for the lunch period. The typist who stays behind at the end of the work day, without being asked, to type a letter that will be needed "early tomorrow morning" is entitled to compensation, whether or not such work is officially ordered or approved. The fact that it is known establishes a legal basis for overtime payment. The obligation to initiate payment for such work rests upon the supervisor, but claims may be filed by an employee within a six year time frame. It is important to emphasize that the FLSA does not in any way diminish a supervisor's responsibility for ordering or authorizing overtime work. The FLSA simply adds an additional responsibility to supervisors, i.e., to see to it that overtime work is not, in fact, performed except when compensation for such overtime is intended. To this end, supervisors must keep accurate records concerning the hours worked by their nonexempt employees. It is imperative that supervisors recognize the importance of this surveillance function as far as time and attendance documentation for overtime work is concerned.

b. Exempt vs. nonexempt. Employees are covered by the FLSA unless specifically exempted from coverage on the basis of performance of professional, administrative, or executive work. Thus, nonexempt employees are covered by the provisions of the FLSA, and exempt employees are not covered by the provisions of FLSA. The determination that a position is either exempt or nonexempt is made as a part of the classification process.

c. Hours of work. A nonexempt employee is entitled to overtime under FLSA for actual work in excess of 40 hours in a work-week (except for employees engaged in fire protection and law enforcement functions). Periods of absence, such as when an employee is on leave or excused from work due to a holiday, are

28AUG 1990

not considered work for this purpose (court leave is an exception to this rule).

5. Action

a. Activity heads. Activity heads are responsible for ensuring compliance as follows:

(1) The basic responsibility of management is to effectively manage and control the work of the organization, and to make efficient use of money and manpower resources towards this end. It is in no way altered by FLSA. Managers will continue to insure that work is performed by employees when they need and want it performed, and equally they must also insure that work is not performed when it is not needed and when they do not want it performed. FLSA gives special emphasis to this continuing responsibility.

(2) Under FLSA, management cannot accept the benefits of a nonexempt employee's work without compensating the employee for the work. It is not sufficient to issue a rule that employees covered by FLSA may not perform work outside normal work hours unless ordered to do so, or that they may not perform such overtime work without a clear indication from the responsible manager or supervisor that it will be approved after the fact.

b. Director, NTC CCPO. The Director, NTC CCPO is responsible for keeping activity heads informed, as appropriate, on how supervisors and operating officials are discharging their responsibilities.

c. Wage and Classification Division, NTC CCPO. The Wage and Classification Division, NTC CCPO will determine whether positions are exempt or nonexempt from the FLSA. The determination will be made and documented as a part of each position classification evaluation.

6. Use of Paid Overtime and Compensatory Time Off

a. General information. The FLSA and Title 5 provide that all civilian employees are entitled to compensation for overtime work. While the rules concerning hours of work and overtime rates differ between the two laws, the net result of both is that employees must be compensated for overtime worked. There is no statutory provision under the FLSA for granting compensatory time off in lieu of overtime pay, nor does FLSA rescind a GS employee's entitlement to request compensatory time off for irregular or occasional overtime work under Title 5. Therefore, under certain circumstances, FLSA nonexempt employees

28 AUG 1990

may be granted compensatory time off as a substitute for overtime pay under Title 5. The following paragraphs discuss these circumstances. For specific guidance on related topics, contact a staff member of the Wage and Classification Division of the NTC CCPO.

b. Overtime pay entitlement solely under Title 5 USC.

If a nonexempt employee earns his or her overtime pay entitlement in a given workweek solely under Title 5, all rules applicable to requesting and granting compensatory time under Title 5 apply. FLSA has no effect.

c. Overtime pay entitlement solely under FLSA. Compensatory time is not allowed; the employee must be compensated with overtime pay.

d. Overtime pay entitlement under both Title 5 USC and FLSA.

(1) If the overtime pay entitlement in a given workweek is greater under FLSA, the employee must be paid, as in paragraph 6c, above.

(2) If the overtime pay entitlement in a given workweek is equal under both sets of rules, or if the overtime entitlement under Title 5 is greater than the overtime entitlement under FLSA, compensatory time off may be substituted for overtime pay. The employee must request the compensatory time off in advance, in writing.

7. Travel Time as "Hours of Work" under FLSA. One of the major changes introduced by the FLSA is the nature of criteria to be used in determining what periods of time spent by nonexempt employees will be considered "hours of work" for compensation purposes. One issue of primary concern for federal employees is travel time as "hours of work" under FLSA. In general, authorized travel time outside regular working hours is "hours of work" under FLSA if a nonexempt employee performs work while traveling, travels as a passenger to a temporary duty station and returns during the same day, or travels as a passenger on nonworkdays during hours which correspond to his/her regular working hours. These general principles, together with the examples in enclosures (1) through (4) provide instructions as to whether time spent traveling by nonexempt employees should be considered as hours of work under FLSA. Supervisors should consult the Wage and Classification Division, NTC CCPO for guidance on specific cases prior to authorization of travel of nonexempt employees during other than normal working hours.

28AUG 1990

8. FLSA Complaints Procedures

a. Who may file a complaint. An employee or third party may bring to OPM's attention any matter considered to be a violation of the FLSA. Typically, these matters would involve such things as failure to pay proper overtime wages, including allegations that employees have been "suffered or permitted" to work outside regular hours without proper compensation, in violation of the act; "equal pay" issues involving the payment of different wages to men and women for performing substantially the same work in the same establishment (in effect, the violation of classification principles); minimum wage violations; child labor violations; and exempt/nonexempt determinations. It is hoped that employees who feel they have a complaint may elect to resolve the complaint through regular supervisory channels before beginning a formal investigation through OPM compliance and complaint procedures. However, there is no requirement that this be done. OPM will operate its FLSA complaint system in such a way as to maintain confidentiality for complainants unless it is impossible to do so under the circumstances. Every reasonable effort will be made to preserve confidentiality.

b. Where to file a complaint. Complaints may be filed with the appropriate regional office of OPM. An employee whose employing activity is located in Illinois, Indiana, Michigan, Minnesota, or Wisconsin may file a complaint with the Great Lakes Region, OPM, at the following address:

Great Lakes Region
Office of Personnel Mangement
Federal Office Building, 30th Floor
230 S. Dearborn Street
Chicago, Illinois 60604

Employees outside this area should contact the Wage and Classification Division of the NTC CCPO for the address of the appropriate OPM regional office.

c. Time limits. An FLSA complaint generally must be filed within six years of the alleged violation. No complaint alleging violations before May 1, 1974, the effective date of the Federal amendments to the Act, will be accepted.

NTCGLAKESINST 12551.1

28 AUG 1990

d. Advice and assistance. The NTC CCPO will provide advice and assistance on the processing of complaints. Activity heads receiving notification of a complaint are requested to promptly contact the Wage and Classification Division of the NTC CCPO so that processing can be accomplished within applicable time limits.

A handwritten signature in black ink, appearing to read 'S. T. Millikin', with a stylized, cursive script.

S. T. MILLIKIN
Chief of Staff

DISTRIBUTION:
NTCGLAKESINST 5216.5H
LIST V
N2 (20)

28 AUG 1990

HOME TO WORK TRAVEL AS "HOURS OF WORK" UNDER FLSA

<u>Kind of Travel Involved:</u>	<u>Is Travel Time "hours of work"?</u>
A. Home to Work - Normal Situation	
Normal home to work (work to home) travel	No
Employee <u>drives</u> a Government vehicle home (as a requirement of the employing agency) to respond to emergency calls immediately from his/her home. (Note 1)	Yes
Employee <u>drives</u> a Government vehicle home (as a <u>requirement</u> of the employing agency) to transport other employees home to work (or job site). (Note 1)	Yes
Employee reports at a designated meeting place and drives a vehicle (<u>as a requirement</u> of the employing agency) to transport other employees equipment to a job site. (Note 2)	Yes
Employee reports at a designated meeting place and is transported (as a <u>passenger</u>) by government vehicle to a job site.	No
Employee reports at a designed meeting place (receives instructions, performs other work, <u>or</u> picks up and carries tools) and is transported (as a <u>passenger</u>) by government vehicle to a job site. (Note 2)	Yes
B. Home to Work - Emergency Situation	
Employee (at home) receives an emergency call outside regular working hours to return (travel) to normal duty location (or another job site <u>within the limits of the official duty station</u>).	No
Employee (at home) receives an emergency call outside regular working hours to travel to a temporary duty station (<u>outside the limits of the official duty station</u>) and the distance traveled is greater than normal home to work travel. (Note 3)	Yes

Enclosure (1)

28 AUG 1990

Note 1 - All time spent driving the vehicle home to work (work to home) is hours worked.

Note 2 - The travel from home to the designated meeting place (and return) is normal home to work travel. However, the performance of work or other activities which is an integral part of the employee's job (e.g., picking up or receiving instructions) at the designated meeting place constitutes the commencement of the employee's workday. All subsequent travel (to a job site and return) is hours worked.

Note 3 - If the distance to the temporary duty location (outside the limits of the official duty station) is in excess of the distance from the employee's home to normal duty location, the entire time spent traveling from the employee's home to the temporary duty location and return is hours worked. Conversely, if the distance to the temporary duty location is equal to or less than the distance from the employee's home to normal duty location, the time spent traveling to the temporary duty location and return is not hours worked.

28 AUG 1990

TRAVEL WITHIN THE LIMITS OF THE OFFICIAL DUTY STATION AS
"HOURS OF WORK" UNDER FLSA (Note 1)

Is travel time "hours of work"? (Note 2)

<u>Kind of Travel Involved:</u>	<u>During regular working hours</u>	<u>Outside regular working hours</u>
<u>From</u> home directly <u>to</u> job site before regular working hours (Note 3)	Not Applicable	No
<u>From</u> normal duty location <u>to</u> job site (Note 4)	Yes	Yes
<u>From</u> job site <u>to</u> job site	Yes	Yes
<u>From</u> job site <u>to</u> normal duty location	Yes	Yes
<u>From</u> job site directly <u>to</u> home after regular working hours (Note 4)	Not Applicable	No

NOTE: For purpose of this table, the term "job site" means a duty location within the limits of the official duty station other than the employee's normal duty location.

Note 1 - These rules apply to travel either as a driver of a vehicle or as a passenger in a vehicle within the limits of the official duty station during the same day.

Note 2 - Normal home to work (work to home) travel and bona fide meal periods are not included in hours worked.

Note 3 - For travel time outside regular working hours to be compensable under this basic principle, the time spent traveling must be continuous with and serve to extend the employee's regular tour of duty.

Note 4 - Travel from home directly to a job site within the limits of the official duty station is viewed as normal home to work travel. The same applies for travel from a job site directly to the employee's home after regular working hours.

Enclosure (2)

28AUG 1990

WORK PERFORMED WHILE TRAVELING AWAY FROM OFFICIAL DUTY
STATION AS "HOURS OF WORK" UNDER FLSA

<u>Kind of Travel Involved:</u>	<u>Is travel time</u> <u>"hours of work"? (Note 1)</u>
Driver of an automobile, truck, bus or other vehicle	Yes
Pilot of an airplane, helicopter, or other aircraft	Yes
Pilot of a boat, barge, or other vessel (<u>not</u> subject to the seaman exemption)	Yes
Assistant driver or crew member assisting in the operation of a vehicle, aircraft, or boat	Yes
Passenger riding in a vehicle (not otherwise entitled to hours worked for travel as a passenger) (Note 2)	No
An employee required to perform work while traveling; e.g.,	Yes
<ul style="list-style-type: none"> - Courier carrying classified documents - Guard escorting a prisoner - Security specialist guarding classified or valuable equipment in transit 	

Note 1 - Bona fide meal periods are deducted from hours worked. Under certain conditions sleeping periods or periods when an employee is relieved from duty are not included in hours worked.

Note 2 - If a passenger shares the driving of a vehicle with the driver, each is considered to be performing work while traveling only for that portion of the trip during which he/she is actually driving the vehicle.

Enclosure (3)

28 AUG 1986

TRAVEL AS A PASSENGER ON A ONE-DAY ASSIGNMENT AWAY FROM
OFFICIAL DUTY STATION AS "HOURS OF WORK" UNDER FLSA (Note 1)

Kind of Travel Involved: Is travel time outside
regular working hours
"hours of work"? (Note 2)

A. Travel by Common Carrier

Travel time from home to
common carrier terminal (Note 3) No

Normal waiting time at the Yes
terminal prior to scheduled
departure time of the common
carrier (Note 4)

Travel time from scheduled Yes
departure time from the terminal
to arrival time at the terminal
at point of destination

Usual waiting time which interrupts Yes
travel (Note 5)

Travel time from terminal at point Yes
of destination to temporary duty
station

B. Travel by Automobile

Travel time from official duty Yes
station to temporary duty station

Travel time from home directly to Yes
temporary duty station (Note 6)

(The same rules apply for travel time and waiting time on the
return trip from the temporary duty station to the employee's
official duty station or directly to the employee's home.)

Note 1 - All travel time during regular working hours (excluding
bona fide meal periods) is hours worked.

Note 2 - Bona fide meal periods are deducted from hours worked.

Enclosure (4)

28 AUG 1990

- Note 3 - Since, except for the one-day assignment, the employee would have to report to his/her normal duty location, the travel time between the employee's home and the common carrier terminal is not included in hours worked. However, if (1) the common carrier terminal is located outside the limits of the official duty station and (2) the employee's travel time from home to common carrier terminal is in excess of normal home to work travel, the employee shall be credited with the excess travel time as hours worked.
- Note 4 - Normal waiting time at the terminal from designated predeparture time until scheduled departure time of the common carrier is hours worked. Any waiting time in excess of normal waiting time is not hours worked.
- Note 5 - When an employee travels to an intervening common carrier terminal and had to wait for a connecting flight to continue traveling to the temporary duty station, the usual waiting time at the intervening common carrier terminal is normal waiting time and is hours worked.
- Note 6 - The employee shall be credited with the lesser of (1) the actual hours worked for the time spent traveling to the temporary duty station (excluding normal home to work travel), or (2) the estimated hours worked for such travel had the employee traveled directly from the official duty station to the temporary duty station.